

# Calendar No. 374

107<sup>TH</sup> CONGRESS  
2D SESSION

# S. 672

To amend the Immigration and Nationality Act to provide for the continued classification of certain aliens as children for purposes of that Act in cases where the aliens “age-out” while awaiting immigration processing, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 2 (legislative day, MARCH 30), 2001

Mrs. FEINSTEIN (for herself, Mrs. BOXER, Mr. GRAHAM, Mr. KENNEDY, Mr. HAGEL, Mr. DEWINE, Mr. LEAHY, Mr. HATCH, and Mr. BROWNBACK) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 16 (legislative day, MAY 9), 2002

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To amend the Immigration and Nationality Act to provide for the continued classification of certain aliens as children for purposes of that Act in cases where the aliens “age-out” while awaiting immigration processing, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Child Status Protec-  
3 tion Act”.

4 **SEC. 2. CHILD STATUS PROTECTION.**

5 (a) IMMEDIATE RELATIVES.—Section 201(b)(2)(A)  
6 of the Immigration and Nationality Act (8 U.S.C.  
7 1151(b)(2)(A)) is amended by adding at the end the fol-  
8 lowing:

9 “(iii) Notwithstanding section 101(b)(1), an un-  
10 married alien 21 years of age or older on whose be-  
11 half a petition was filed under section 204 to classify  
12 the alien as an immediate relative under clause (i)  
13 shall be classified as a child of a citizen of the  
14 United States for purposes of that clause, and the  
15 petition shall be considered a petition for classifica-  
16 tion under that clause, if the alien attained 21 years  
17 of age after the date on which the petition was filed  
18 but while the petition is pending before the Attorney  
19 General.

20 “(iv) An unmarried alien under 21 years of age  
21 on whose behalf a petition was filed under section  
22 204 to classify the alien as an immigrant under sec-  
23 tion 203(a)(2)(A) shall be classified as a child of a  
24 citizen of the United States for purposes of clause  
25 (i), and the petition shall be considered a petition for  
26 classification under that clause, if a petitioning par-

ent became a naturalized citizen of the United States after the petition was filed but while the petition is pending before the Attorney General.

“(v) An unmarried alien who was in a marriage on the date a petition was filed under section 204 to classify the alien as an immigrant under section 203(a)(3) shall be classified as a child of a citizen of the United States for purposes of clause (i), and the petition shall be considered a petition for classification under that clause, if—

“(I) the alien’s marriage was legally terminated while the petition is pending before the Attorney General; and

“(II) the alien was under 21 years of age on the date of legal termination of the marriage.”.

(b) ~~FAMILY-SPONSORED, EMPLOYMENT-BASED, AND DIVERSITY IMMIGRANTS.~~—Section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d)) is amended to read as follows:

“(d) ~~TREATMENT OF FAMILY MEMBERS.~~—

“(1) ~~IN GENERAL.~~—A spouse or child (as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1)) shall, if not otherwise entitled to immigrant status and the immediate issuance of a

visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

~~“(2) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN.—An unmarried alien 21 years of age or older on whose behalf a petition was filed under section 204 to classify the alien as an immigrant under subsection (a), (b), or (c), who is accompanying or following to join his or her parent under this section, shall be classified as a child for purposes of entitlement to the same immigrant status of the parent, and the petition shall be considered a petition for classification for such purposes, if the alien attained 21 years of age after the date on which the petition was filed but while the petition is pending before the Attorney General.”.~~

~~(c) ASYLEES.—Section 208(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(3)) is amended—~~

~~(1) by striking “A spouse” and inserting “(A) IN GENERAL.—A spouse”; and~~

~~(2) by adding at the end the following:~~

~~“(B) CONTINUED CLASSIFICATION OF CERTAIN ALIENS AS CHILDREN FOR ASYLUM ELIGIBILITY.—An unmarried alien who is accom-~~

1           panying or seeking to join a parent granted  
 2           asylum under this subsection, who is seeking to  
 3           be granted asylum under this paragraph, and  
 4           who was under 21 years of age on the date on  
 5           which the alien's parent applied for asylum  
 6           under this section shall continue to be classified  
 7           as a child for purposes of this paragraph, if the  
 8           alien attained 21 years of age after the applica-  
 9           tion was filed but while the application is pend-  
 10          ing before the Attorney General."

11   **SEC. 3. EFFECTIVE DATE.**

12          Section 2, and the amendments made by section 2,  
 13   shall apply to—

14           (1) all applications and petitions filed before the  
 15          date of enactment of this Act and pending on such  
 16          date; and

17           (2) all applications and petitions filed on or  
 18          after such date.

19   **SECTION 1. SHORT TITLE.**

20          *This Act may be cited as the "Child Status Protection*  
 21   *Act".*

1 **SEC. 2. USE OF AGE ON PETITION FILING DATE, PARENT'S**  
 2 **NATURALIZATION DATE, OR MARRIAGE TER-**  
 3 **MINATION DATE, IN DETERMINING STATUS**  
 4 **AS IMMEDIATE RELATIVE.**

5 *Section 201 of the Immigration and Nationality Act*  
 6 *(8 U.S.C. 1151) is amended by adding at the end the fol-*  
 7 *lowing:*

8 *“(f) RULES FOR DETERMINING WHETHER CERTAIN*  
 9 *ALIENS ARE IMMEDIATE RELATIVES.—*

10 *“(1) AGE ON PETITION FILING DATE.—Except as*  
 11 *provided in paragraphs (2) and (3), for purposes of*  
 12 *subsection (b)(2)(A)(i), a determination of whether an*  
 13 *alien satisfies the age requirement in the matter pre-*  
 14 *ceding subparagraph (A) of section 101(b)(1) shall be*  
 15 *made using the age of the alien on the date on which*  
 16 *the petition is filed with the Attorney General under*  
 17 *section 204 to classify the alien as an immediate rel-*  
 18 *ative under subsection (b)(2)(A)(i).*

19 *“(2) AGE ON PARENT'S NATURALIZATION*  
 20 *DATE.—In the case of a petition under section 204*  
 21 *initially filed for an alien child's classification as a*  
 22 *family-sponsored immigrant under section*  
 23 *203(a)(2)(A), based on the child's parent being law-*  
 24 *fully admitted for permanent residence, if the petition*  
 25 *is later converted, due to the naturalization of the*  
 26 *parent, to a petition to classify the alien as an imme-*

1 *diate relative under subsection (b)(2)(A)(i), the deter-*  
 2 *mination described in paragraph (1) shall be made*  
 3 *using the age of the alien on the date of the parent's*  
 4 *naturalization.*

5 “(3) *AGE ON MARRIAGE TERMINATION DATE.*—*In*  
 6 *the case of a petition under section 204 initially filed*  
 7 *for an alien's classification as a family-sponsored im-*  
 8 *migrant under section 203(a)(3), based on the alien's*  
 9 *being a married son or daughter of a citizen, if the*  
 10 *petition is later converted, due to the legal termi-*  
 11 *nation of the alien's marriage, to a petition to clas-*  
 12 *sify the alien as an immediate relative under sub-*  
 13 *section (b)(2)(A)(i) or as an unmarried son or daugh-*  
 14 *ter of a citizen under section 203(a)(1), the deter-*  
 15 *mination described in paragraph (1) shall be made*  
 16 *using the age of the alien on the date of the termi-*  
 17 *nation of the marriage.”.*

18 **SEC. 3. TREATMENT OF CERTAIN UNMARRIED SONS AND**  
 19 **DAUGHTERS SEEKING STATUS AS FAMILY-**  
 20 **SPONSORED, EMPLOYMENT-BASED, AND DI-**  
 21 **VERSITY IMMIGRANTS.**

22 *Section 203 of the Immigration and Nationality Act*  
 23 *(8 U.S.C. 1153) is amended by adding at the end the fol-*  
 24 *lowing:*

1       “(h) *RULES FOR DETERMINING WHETHER CERTAIN*  
 2 *ALIENS ARE CHILDREN.*—

3               “(1) *IN GENERAL.*—*For purposes of subsections*  
 4 *(a)(2)(A) and (d), a determination of whether an*  
 5 *alien satisfies the age requirement in the matter pre-*  
 6 *ceding subparagraph (A) of section 101(b)(1) shall be*  
 7 *made using—*

8               “(A) *the age of the alien on the date on*  
 9 *which an immigrant visa number becomes avail-*  
 10 *able for such alien (or, in the case of subsection*  
 11 *(d), the date on which an immigrant visa num-*  
 12 *ber became available for the alien’s parent), but*  
 13 *only if the alien has sought to acquire the status*  
 14 *of an alien lawfully admitted for permanent res-*  
 15 *idence within one year of such availability; re-*  
 16 *duced by*

17               “(B) *the number of days in the period dur-*  
 18 *ing which the applicable petition described in*  
 19 *paragraph (2) was pending.*

20               “(2) *PETITIONS DESCRIBED.*—*The petition de-*  
 21 *scribed in this paragraph is—*

22               “(A) *with respect to a relationship described*  
 23 *in subsection (a)(2)(A), a petition filed under*  
 24 *section 204 for classification of an alien child*  
 25 *under subsection (a)(2)(A); or*



“(B) with respect to an alien child who is a derivative beneficiary under subsection (d), a petition filed under section 204 for classification of the alien’s parent under subsection (a), (b), or (c).

“(3) *RETENTION OF PRIORITY DATE.*—If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(4) and (d), the alien’s petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.”.

**SEC. 4. USE OF AGE ON PARENT’S APPLICATION FILING DATE IN DETERMINING ELIGIBILITY FOR ASYLUM.**

Section 208(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(3)) is amended to read as follows:

“(3) *TREATMENT OF SPOUSE AND CHILDREN.*—

“(A) *IN GENERAL.*—A spouse or child (as defined in section 101(b)(1) (A), (B), (C), (D), or (E)) of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien.

1                   “(B) *CONTINUED CLASSIFICATION OF CER-*  
 2                   *TAIN ALIENS AS CHILDREN.*—*An unmarried*  
 3                   *alien who seeks to accompany, or follow to join,*  
 4                   *a parent granted asylum under this subsection,*  
 5                   *and who was under 21 years of age on the date*  
 6                   *on which such parent applied for asylum under*  
 7                   *this section, shall continue to be classified as a*  
 8                   *child for purposes of this paragraph and section*  
 9                   *209(b)(2), if the alien attained 21 years of age*  
 10                   *after such application was filed but while it was*  
 11                   *pending.”.*

12 **SEC. 5. USE OF AGE ON PARENT’S APPLICATION FILING**  
 13                   **DATE IN DETERMINING ELIGIBILITY FOR AD-**  
 14                   **MISSION AS REFUGEE.**

15                   *Section 207(c)(2) of the Immigration and Nationality*  
 16                   *Act (8 U.S.C. 1157(c)(2)) is amended—*

17                   (1) *by striking “(2)” and inserting “(2)(A)”;*  
 18                   *and*

19                   (2) *by adding at the end the following:*

20                   “(B) *An unmarried alien who seeks to accompany, or*  
 21                   *follow to join, a parent granted admission as a refugee*  
 22                   *under this subsection, and who was under 21 years of age*  
 23                   *on the date on which such parent applied for refugee status*  
 24                   *under this section, shall continue to be classified as a child*  
 25                   *for purposes of this paragraph, if the alien attained 21*

1 *years of age after such application was filed but while it*  
 2 *was pending.”.*

3 **SEC. 6. TREATMENT OF CLASSIFICATION PETITIONS FOR**  
 4 **UNMARRIED SONS AND DAUGHTERS OF NAT-**  
 5 **URALIZED CITIZENS.**

6 *Section 204 of the Immigration and Nationality Act*  
 7 *(8 U.S.C. 1154) is amended by adding at the end the fol-*  
 8 *lowing:*

9 *“(k) PROCEDURES FOR UNMARRIED SONS AND*  
 10 *DAUGHTERS OF CITIZENS.—*

11 *“(1) IN GENERAL.—Except as provided in para-*  
 12 *graph (2), in the case of a petition under this section*  
 13 *initially filed for an alien unmarried son or daugh-*  
 14 *ter’s classification as a family-sponsored immigrant*  
 15 *under section 203(a)(2)(B), based on a parent of the*  
 16 *son or daughter being an alien lawfully admitted for*  
 17 *permanent residence, if such parent subsequently be-*  
 18 *comes a naturalized citizen of the United States, such*  
 19 *petition shall be converted to a petition to classify the*  
 20 *unmarried son or daughter as a family-sponsored im-*  
 21 *migrant under section 203(a)(1).*

22 *“(2) EXCEPTION.—Paragraph (1) does not apply*  
 23 *if the son or daughter files with the Attorney General*  
 24 *a written statement that he or she elects not to have*  
 25 *such conversion occur (or if it has occurred, to have*

12                   “(4) CLARIFICATION.—This subsection shall  
13                   apply to a petition if it is properly filed, regardless  
14                   of whether it was approved or not before such natu-  
15                   ralization.”.

18        *Section 204(a)(1)(D) of the Immigration and Nation-*  
19        *ality Act (8 U.S.C. 1154(a)(1)(D)) is amended by adding*  
20        *at the end the following new clause:*

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1 **SEC. 8. EFFECTIVE DATE.**

2       *The amendments made by this Act shall take effect on*  
3 *the date of the enactment of this Act and shall apply to*  
4 *any alien who is a derivative beneficiary or any other bene-*  
5 *ficiary of—*

6           *(1) a petition for classification under section 204*  
7 *of the Immigration and Nationality Act (8 U.S.C.*  
8 *1154) approved before such date but only if a final*  
9 *determination has not been made on the beneficiary's*  
10 *application for an immigrant visa or adjustment of*  
11 *status to lawful permanent residence pursuant to such*  
12 *approved petition;*

13           *(2) a petition for classification under section 204*  
14 *of the Immigration and Nationality Act (8 U.S.C.*  
15 *1154) pending on or after such date; or*

16           *(3) an application pending before the Depart-*  
17 *ment of Justice or the Department of State on or*  
18 *after such date.*

**Calendar No. 374**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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**A BILL**

To amend the Immigration and Nationality Act to provide for the continued classification of certain aliens as children for purposes of that Act in cases where the aliens “age-out” while awaiting immigration processing, and for other purposes.

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MAY 16 (legislative day, MAY 9), 2002

Reported with an amendment